UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In re:	Case No. 03-54906-ASW
MARK JOSEPH BOSIO,	Chapter 7
Debtor	
GOLDEN ROAD MOTOR INN, INC. dba ATLANTIS CASINO RESORT,	Adversary No. 03-5549
Plaintiff,	
vs.	
MARK JOSEPH BOSIO,	
Defendant	

MEMORANDUM DECISION
DETERMINING DEBT TO BE DISCHARGEABLE

Before the Court is a complaint by Golden Road Motor Inn, Inc. dba Atlantis Casino Resort ("Creditor") against Mark Joseph Bosio, the Debtor in this Chapter 7 case ("Debtor"). The complaint alleges a debt of $76,709.99 plus statutory damages for dishonored checks and negotiable instruments pursuant to Cal. Civ. Code §1719 and Nev. Rev. Stat. §41.620, attorney's fees, costs and interest and seeks a determination of nondischargeability based upon 11 U.S.C.[1] §523(a)(2).

The matter has been tried and submitted for decision. Creditor is represented by R. John Youngs, Esq. and Debtor is

[1] Unless otherwise noted, all statutory references are to Title 11, United States Code, as amended in 1994 ("Bankruptcy Code").

represented by Mark W. Hafen, Esq. At trial, Creditor called as witnesses Debtor and Ronald Hunt. Debtor called himself as witness.

This Memorandum Decision constitutes the Court's findings of fact and conclusions of law, pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

I.
FACTS

Debtor owned and operated a general engineering contracting company, Mark Bosio Construction, Inc. dba B & B Construction Co. ("Company") between 1997 and June 2003. The Company worked on highways, bridges, subdivisions, parking lots, and shopping centers and constructed everything but the buildings. The Company had annual gross revenues of approximately $4 million between June 2000 and June 2003. The Company had annual net income of $20,000 between June 2001 and June 2003. The Company paid Debtor an annual salary of $70,000 in 2001 and $100,000 in 2002.

Debtor testified that the Company started out as a sole proprietorship and incorporated as an "S" corporation sometime before 2003, but Debtor could not remember when. Because the Company was an "S" corporation, Debtor testified that he transferred dividends from the Company checking account to his personal checking account from time to time. Debtor testified that prior to his divorce, his ex-wife owned some percentage of the Company stock, but Debtor could not recall the exact amount. During the divorce, Debtor's ex-wife was given a 2003 Ford

Excursion valued at $50,000 in exchange for her interest in the Company. Debtor testified he could not recall when he acquired sole ownership of the Company, but he did recall that by April 30, 2003, he was sole shareholder of the Company.

Debtor explained that to obtain projects for the Company, he would make bids and, if he were the low bidder, the Company would usually be awarded the contract. It took anywhere from 30 to 90 days after the bid was accepted for the contract to be signed. Once the project was started, the Company would work for 30 days fronting all of the costs, then bill the contractor. The contractor then had 30 days to pay the bill, although it could take longer on government projects. When paid during the course of a project, the Company received 90% of the amount billed. Meanwhile, the Company continued to work and front additional expenses. To have sufficient operating funds, the Company had a revolving credit line with the Bank of Walnut Creek.

Creditor operates the Atlantis Casino Resort ("Casino"), a gaming establishment, in Reno, Nevada. Debtor frequented the Casino on several occasions between 1997 and 2003 for the purpose of gambling. Debtor testified that he received several perks from the Casino -- and that everything was complimentary during his stays -- including free room. Debtor only frequented that particular Casino and preferred keeping a good relationship with the Casino so he could keep going there. Mr. Hunt, an employee of Creditor, testified that Debtor was a well-established customer and the Casino liked him.

Starting in 1997, Creditor extended check cashing privileges to Debtor. Between 1997 and 2002, Creditor also extended "markers" to Debtor. Mr. Hunt, the "cage manager" at the Casino, who is also responsible for overseeing the collection of Debtor's debt to Creditor, testified that markers are a credit instrument under Nevada law that can be used for the purpose of a customer gambling at a casino and no other purpose. Markers can be used at the gaming tables such as blackjack or 21, in the high limit slot area or at the cashier's cage. A marker is a negotiable instrument whereby the customer has 30 days to repay the instrument after issuance. If the marker is not repaid, then the casino may forward the marker to the customer's bank for payment, just like a check.

Debtor testified that at one point he owed Creditor $80,000 that he repaid over time in monthly payments of $5,000 with funds from the Company. Creditor's records reflect that Debtor incurred a $75,000 debt on or about July 29, 2001, that a $25,000 payment was made toward the debt on or about October 5, 2001, and the remainder of the debt was repaid through ten installments of $5,000 between November 12, 2001 and September 12, 2002. Mr. Hunt testified that as of January 29, 2003, Debtor had $30,000 in markers outstanding from a trip Debtor made in September 2002 and Debtor had reached the maximum of his $30,000 credit line with Creditor.

Debtor explained that, on or about January 29, 2003, prior to heading to Reno, he arranged with Creditor to pay them $30,000 in personal checks so it would reopen his credit line so he could come to the Casino and play. Debtor recalled telling

Mr. Hunt that Mr. Hunt could call the operations manager of the Bank of America, the bank on which the personal checks would be drawn, and confirm that there were sufficient funds in Debtor's account to cover the checks. Debtor stated that he believed Mr. Hunt did call Bank of America.

Mr. Hunt testified that on or about January 29, 2003, Debtor contacted him and indicated that he was coming to the Casino and wanted to play, that Debtor wanted to pay for some outstanding markers and to reopen his $30,000 credit line with Creditor. Mr. Hunt testified that he asked Debtor how Debtor intended to pay for the items and Debtor indicated that he would like to pay by personal check. Mr. Hunt testified that he requested Debtor pay the $30,000 in outstanding markers by cashier's check, but Debtor said he did not have enough time to go to the bank to obtain a cashier's check and still wanted to pay by personal check and have the credit line reopened. (Debtor did not recall telling Mr. Hunt that he did not have time to get a cashier's check so he would bring personal checks.) Debtor gave Mr. Hunt the name of the bank operating officer at Bank of America where his checking account was held. Mr. Hunt testified that he contacted Jim Tressler,[2] Creditor's executive credit host who was out on medical leave of absence at the time, and asked Mr. Tressler how he felt about the transaction. Mr. Tressler requested Mr. Hunt contact the bank, which Mr. Hunt did, and Bank of America indicated that there were sufficient funds in the checking account to cover $30,000

[2] Mr. Tressler was not called to testify. Creditor's counsel indicated that Mr. Tressler had died the week before the trial was held.

in checks. Mr. Hunt called Mr. Tressler again, advised him of what Bank of America had said, and Mr. Tressler advised Mr. Hunt to proceed with the transaction because Debtor was a good player.

Mr. Hunt testified that when Debtor showed up at the Casino to play, he gave Creditor two personal checks drawn on the Bank of America account in the aggregate amount of $30,000 (collectively "the Checks"). The Checks cleared Debtor's account of the balance owed for the markers given in September 2002 and Creditor reopened his $30,000 credit line.

Between January 29 and January 30, 2003, Debtor gambled at the Casino. During that time, Creditor asserts Debtor endorsed over to Creditor a payroll check in the amount of $1,709.99 drawn on the Company checking account at Community Bank ("Payroll Check"). (Although Debtor did not recall doing so, Debtor acknowledged that it was his signature on the back of the Payroll Check.) Debtor also signed for a total of eleven markers as follows: on January 29, 2003, ten markers drawn on the Community Bank account in the aggregate amount of $35,000[3] (collectively, the "Community Bank Markers") and, on January 30, 2003, one marker drawn on the Bank of America account in the amount of $10,000 ("B of A Marker").

At some point during January 29-30, 2003, Creditor extended Debtor's credit beyond his $30,000 credit line. Debtor testified that during his play at the Casino on January 29-30,

[3] Marker #45841 was in the amount of $4,000; marker #45842 for $2,000; marker #45844 for $4,000; marker #45846 for $3,000; marker #45847 for $4,000; marker #45850 for $2,000; marker #45851 for $4,000; marker #45852 for $4,000; marker #45854 for $3,000; and marker #45857 for $5,000.

2003, he had bad luck. He kept asking for markers to try to get even. He eventually went to the casino cage to obtain additional credit. Debtor testified that he met with Mr. Tressler[4] to see if he could secure more markers. Debtor knew that he had 30 days to repay markers and at the time he spoke with Mr. Tressler, Debtor knew that he had a $120,000 check coming to the Company and Debtor believed it would arrive in the next week. Debtor testified that the Company had completed work for a new school in Salinas more than 90 days before January 29, 2003, and was owed funds in the amount of $120,000 from Thayer Construction Company ("Thayer"), the general contractor for the project. Debtor testified that he contacted the owner of Thayer before going to Reno in January 2003 regarding the status of the $120,000 check and was told that the check would be coming and should be in the mail to the Company anytime.

Debtor testified that he and Mr. Tressler went into a private office behind the cashier's cage and that he saw Mr. Tressler dial an 800 number for the Bank of America that Debtor had given him. Debtor did not hear the conversation, but Debtor invited Mr. Tressler to verify the funds in his checking account and, based upon that conversation, Debtor received additional markers.

Mr. Hunt testified that when Debtor was at the Casino, he reached his credit limit and requested that Creditor increase it. Mr. Hunt called the vice president of finance for Creditor

[4] Debtor testified that he met with Mr. Tressler at the Casino during January 29-30, 2003 while Mr. Hunt testified that Mr. Tressler was on a medical leave of absence during that time. Mr. Hunt testified that he was the person that increased Debtor's credit limit at the Casino.

to get approval for the increase and it was approved.

Debtor testified that when he gave the Checks to Creditor he knew there were funds in the Bank of America account to cover the Checks. Debtor testified when he endorsed the Payroll Check to Creditor he knew there were funds in the Company checking account to cover the Payroll Check. Debtor testified that when he signed for the Community Bank Markers and the B of A Markers he intended to pay back the debt owed. Debtor explained that he believed that he was to receive $120,000 in funds from Thayer during the next week and would be able to repay the markers. At the time Debtor believed he had a flourishing business and, in early 2003, the Company had several prospects for new projects. Debtor testified that at all times he intended to repay all of the gambling obligations he incurred at the Casino and never intended to defraud Creditor.

Mr. Hunt testified that Creditor tracked only $26,600 of the markers provided to Debtor during that time and assumed that Debtor had left the Casino with some unplayed funds. Mr. Hunt stated that in his experience all gambling activity of Debtor at the Casino would be tracked. Debtor testified that he used all of the Community Bank Markers and the B of A Marker at the Casino between January 29-30, 2003 and left broke. Debtor also testified that he did not always have his play tracked while at the Casino, especially when he placed bets at the dice tables.

When Debtor returned to Salinas from Reno, he learned to his surprise that the payroll checks issued to his employees were bouncing. Debtor had his secretary call Community Bank immediately because Debtor believed there was $50,000 in the

Company checking account. Community Bank told the secretary that the Franchise Tax Board ("FTB") had frozen the account. Debtor learned for the first time that both the Company checking account and his personal checking account had just been frozen by the FTB.

Debtor testified that he promptly contacted Julia Jackson[5] at the Casino and told her that his accounts were frozen and he could not make the checks good, and he would keep her abreast of what was occurring. Debtor explained that he spoke with Ms. Jackson between six and twelve times over the next three months about repaying the markers and the checks and keeping her apprised of his financial situation.

Mr. Hunt testified that Creditor promptly deposited the Checks and the Payroll Check. Creditor's records indicate that the Payroll Check was returned to Creditor on February 10, 2003 because the account was closed and that the Checks and the B of A Marker were returned to Creditor between February 12 and 13, 2003 because there were insufficient funds in the account.

Mr. Hunt testified that Creditor held onto the Community Bank Markers before submitting them to that bank as a normal courtesy Creditor would extend to its customers. The Community Bank Markers were eventually submitted to Community Bank and were returned to Creditor on April 25, 2003 all marked "Account Closed."

Debtor testified that if the Company bank account had not been frozen and if the Company had received the $120,000 owed to

[5] Ms. Jackson was not called to testify.

it by Thayer, he would have repaid the money owed to Creditor like he said he would. Debtor explained that if he had received the $120,000 payment from Thayer, he would have deposited that money into another account and paid Creditor.

Sometime in the Spring, the Bank of Walnut Creek ("Bank") called the Company's revolving credit line. Debtor testified that when he first started the Company, he had worked with a gentleman named "Pete" at the San Benito Bank in Hollister and obtained a $50,000 line of credit. Pete left San Benito Bank and moved to the Bank and, as the Company grew, the Company continued to do business with the Bank. Debtor testified that the Bank had fired Pete and now thought its loan with the Company was a bad loan. The Company's revolving credit line came up for renewal in the Spring of 2003 and the Bank declined to renew it and instead called the loan. The Bank had a lien on all of the Company's assets, including equipment worth approximately $1.5 million, as well as a lien on Debtor's house.

As a result of the frozen bank accounts and the problems with the Bank, the Company filed a Chapter 11 bankruptcy petition on April 30, 2003. In its original schedules, the Company listed annual income of $20,000; assets of $323,750; and liabilities of $2,199,666. The Company subsequently amended its schedules to add an additional $421,688 in assets and $174,500 in liabilities.

On June 17, 2003, the Company was granted the right to use the Bank's cash collateral in the amount of $30,000. Debtor testified that those funds were used to pay the bills of the Company and the payroll to stay in business. Debtor did not

receive any of the funds for his own personal use. Debtor also testified that around that time Debtor was negotiating a plan of reorganization with the Bank whereby Debtor would repay the Bank's loan through a monthly payment of $8,000. The Company was the low bidder on three projects at the time of filing its bankruptcy petition and Debtor believed that over time the Company's income stream would repay all creditors in full. The Bank, however, wanted a $16,000 monthly payment and the Company could not make a plan of reorganization work under those terms, so the Company converted its bankruptcy case to a Chapter 7 liquidation on June 23, 2003.

Debtor stated that a number of the Company's creditors pursued him for payment after the Company's bankruptcy case was converted to Chapter 7 and he filed his personal bankruptcy case on July 30, 2003. In his schedules, Debtor listed annual income of $35,000 for the year-to-date, assets of $491,300 and liabilities of $1,468,522. Although Creditor had started collection actions against Debtor in June 2003, Debtor testified that the debt to Creditor had no bearing on his decision to file bankruptcy.

On October 14, 2003, Creditor filed its complaint to determine Debtor's debt nondischargeable.

II.

APPLICABLE LAW

A debt arising from actual fraud "other than a statement respecting the debtor's or an insider's financial condition" is excepted from a Chapter 7 discharge pursuant to §523(a)(2)(A).

The elements of a claim under this statute are:

(1) a representation made by the debtor;

(2) known by the debtor at the time made to be false;

(3) made with the intention and purpose of deceiving the creditor;

(4) upon which the creditor justifiably relied;

(5) which proximately caused damage to the creditor.

In re Anastas, 94 F.3d 1280, 1284 (9th Cir. 1996) ("Anastas").

A representation can include a reckless disregard for the truth of that representation, Anastas, at 1286.

The intent that must be shown for a determination of nondischargeability under §523(a) is actual intent, not merely intent implied in law, or constructive intent; such an intent may, however, be inferred from the totality of the surrounding circumstances, Anastas, at 1286.

The Bankruptcy Code is "designed to afford debtors a fresh start, and we interpret liberally its provisions favoring debtors." In re Bugna, 33 F.3d 1054, 1059 (9th Cir. 1994). The Code's limited exceptions to the general policy of discharge are to be construed narrowly, In re Riso, 978 F.2d 1151 (9th Cir. 1992).

The plaintiff in an action for determination of dischargeability under §523(a) bears the burden of proving all elements of the claim(s) for relief asserted by a preponderance of the evidence, Grogan v. Garner, 498 U.S. 279 (1991).

III.

ANALYSIS

Creditor has not met its burden of proof that Debtor knowingly made a misrepresentation with the intent to defraud Creditor with respect to any of Debtor's debts to Creditor.

Specifically, Creditor failed to prove that Debtor misrepresented the truth by giving Creditor the Checks and endorsing the Payroll Check without intending to cover those checks. Creditor claims that Debtor knew or should have known that he did not have sufficient monies on deposit for the checks to be paid according to their terms, and urges the Court to infer therefrom that Debtor knowingly misrepresented an intention to perform acts that Debtor knew were impossible.

However, the evidence does not support a finding that Debtor knew or should have known that there were insufficient funds in the accounts on which the Checks and the Payroll Check were written. In fact, the evidence is clear that there were sufficient funds in those accounts and both Debtor and Creditor knew those funds were there. Debtor testified credibly that he knew there were sufficient funds in the Bank of America account to cover the Checks. Even Creditor's employee, Mr. Hunt, testified that he called Bank of America and received verification that there were sufficient funds in Debtor's account on January 29, 2003 to cover the Checks. As for the Payroll Check, Debtor stated that he knew there were sufficient funds in the Company checking account when he gambled at the Casino. He called Community Bank immediately upon learning after he returned from Reno, that other payroll checks issued had bounced. It was only after returning from Reno that Debtor learned that the FTB had placed a lien on both his personal

checking account at Bank of America and the Company's checking account. But for the freezing of the two checking accounts by the FTB, there would have been sufficient funds to cover the Checks and the Payroll Check. The Court finds that if the FTB had not frozen the two checking accounts, the Checks and the Payroll Check would have been good and would have been paid promptly.

Creditor also has failed to prove that Debtor misrepresented the truth by signing the Community Bank Markers and the B of A Marker without intending to repay the markers under their terms. Creditor claims Debtor knew or should have known that the markers were written on a closed, or soon to be closed, account and he knew or should have known that he and the Company were insolvent when the markers were written. Creditor urges the Court to infer therefrom that Debtor knowingly misrepresented an intention to perform acts that Debtor knew were impossible. There are two flaws in Creditor's arguments.

First, the evidence does not support a finding that Debtor was unable to perform under the Community Bank Markers or the B of A Marker when he signed them on January 29-30, 2003. Debtor admitted that he did not have sufficient funds in his two checking accounts to cover the markers on the date of signing, but Debtor's uncontroverted testimony was that he did expect to receive a $120,000 check from Thayer in the next week; Debtor clearly had the ability when he signed the Community Bank Markers and the B of A Marker to repay those funds within the 30 days permitted for repayment. There was no proof that Debtor

could not have acquired the $45,000 owed under the markers by the February 26, 2003 due date for payment. Debtor reasonably expected a $120,000 payment to the Company during the first week of February 2003, and Creditor did not establish that this payment could not produce the necessary cash by the marker due date (nor did Creditor prove that other possible sources of funds did not exist, such as other amounts owed to the Company). With respect to Debtor's knowledge of whether he could obtain $45,000 in 30 days after signing the Community Bank Markers and the B of A Marker, his uncontroverted testimony was that he had contacted Thayer before leaving for Reno and believed that the $120,000 owed the Company would be paid during the first week of February 2003. Debtor's expectation may have had an element of hope in it, but Creditor certainly took that risk because Creditor knew that Debtor did not have the funds on hand. Debtor had explained the facts as they were to Creditor.[6] The evidence does not establish that, on January 29-30, 2003, Debtor had no means of raising $45,000 by February 26, 2003. Debtor would certainly have had the ability to pay $45,000 if the check from Thayer for $120,000 had arrived when Thayer said it would.

Second, mere inability to perform does not constitute a misrepresentation of intent to perform for purposes of §523(a)(2)(A). The Ninth Circuit has held:

> We emphasize that the representation made by the card holder in a credit card transaction is not that he has an ability to repay the debt; it is that he has an intention to

[6] Creditor did not justifiably rely on Debtor being paid an additional $120,000 by Thayer. Debtor reasonably expected those funds, but Creditor had actual knowledge that Debtor did not have them.

> repay. [original emphasis] ... [¶] Thus, the focus should not be on whether the debtor was hopelessly insolvent at the time he made the credit card charges. ... Rather, the express focus must be solely on whether the debtor maliciously and in bad faith incurred credit card debt with the intention of petitioning for bankruptcy and avoiding the debt. ...

Anastas, at 1285. This rationale is not limited to debt incurred by credit card use and is equally applicable to debt incurred by markers. In re Miller, 310 B.R. 185, 197 (Bankr. C.D. Cal. 2004) (applying Anastas to a nondischargeability action involving the issuance of markers). Thus, even if it had been proven that Debtor signed the markers unable to perform immediately and knowing of that disability, such facts alone could not, under Anastas, lead to the conclusion that Debtor misrepresented his intention to perform.

The debtor in Anastas had no apparent ability to pay his debt in full at the time it arose, but other facts belied the creditor's contention that he incurred the debt with no intention of repaying it: he made payments for six months, attempted to work out an alternative repayment arrangement, and testified that he wanted to repay but "had a gambling addiction which led him into unexpected financial circumstances", Anastas, at 1287. The Ninth Circuit concluded that:

> Obviously, Anastas had a serious gambling problem. Although it may have been unlikely that he would win back the money to be able to pay back the cash advances that financed the gambling, the record fully supports Anastas' good faith intention to do so. There is no basis in the record for a finding of the type of malicious and bad faith intent not to repay that is necessary for a finding of actual fraud under section 523(a)(2)(A). Thus, we hold that the bankruptcy court was clearly erroneous in finding an intent to

defraud.

Anastas, at 1287. Similarly, Debtor here made efforts to perform the cash payment requirement of the Community Bank Markers and the B of A Markers. Prior to going to the Casino on January 29, 2003, Debtor called Thayer and inquired as to when the Company could expect the $120,000 payment that was overdue. Debtor was told that the payment should arrive during the first week of February 2003. When the $120,000 payment did not arrive as expected, Debtor conscientiously called Creditor and kept it apprised of Debtor's efforts in securing funds to repay the markers. Debtor also owned the Company, but the frozen bank accounts and the calling of the revolving line of credit by the Bank hampered Debtor's efforts to continue operating his business. The record does not support a finding that, at the time Debtor signed the Community Bank Markers and the B of A Marker, he did not intend to repay them according to their terms.

Finally, Creditor asserts that Debtor acted with reckless disregard for the financial condition of the Company and himself when presenting the Checks and the Payroll Check and obtaining the Community Bank Markers and the B of A Marker. Creditor asserts that the fact the Company filed a bankruptcy petition three months after Creditor extended credit to Debtor and Debtor himself filed for bankruptcy six months after the extension indicate Debtor obtained the markers with reckless disregard for his and the Company's actual financial condition.

A representation under §523(a)(2)(A) can include a reckless disregard for the truth of that representation. In determining

what conduct could be considered to be reckless disregard, the Bankruptcy Appellate Panel of the Ninth Circuit has held:

> [R]eckless conduct must involve more than simple, or even inexcusable negligence; it requires such extreme departure from the standards of ordinary care that it presents a danger of misleading [those whom rely on the truth of the representation]. (Citation omitted). ... '[R]eckless indifference to the actual facts, without examining the available source of knowledge which lay at hand, and with no reasonable ground to believe that it was in fact correct' [is] sufficient to establish the knowledge element. (Citation omitted).

In re Kong, 239 B.R. 815, 826-27 (9th Cir. BAP 1999).

The evidence does not support a finding that Debtor knew or believed that he would not be able to repay his debt to Creditor. The Court finds that Debtor definitely believed he would be able to repay his gambling debts to Creditor. In fact, although the Company must have had a tax issue, the evidence supports a finding that Debtor sincerely believed that the Company was operating successfully in late January 2003 -- with several new projects in the pipeline. Debtor credibly testified that but for the FTB freezing the Company's bank accounts and the Bank calling the revolving credit line, the Company would have continued to operate and would not have had to file a bankruptcy petition. Debtor also testified credibly that if the Bank had accepted an $8,000 monthly payment, that the Company might well have been able to emerge successfully from bankruptcy. Debtor explained credibly that even after the Company filed its bankruptcy petition, he intended to reorganize the Company and pay creditors in full over time and would have but for the Bank refusing to agree to the plan of

reorganization. The Company apparently did have a tax problem, but there is no evidence that Debtor knew or had reason to know that his and the Company's checking accounts were going to be frozen by the FTB. Debtor did not act recklessly towards Creditor.

In sum, the Court finds that Debtor was honest and forthright in his dealings with Creditor. Debtor fully intended to repay Creditor for all of his gambling debts incurred at the Casino and he reasonably believed the checks and markers he gave the Casino on January 29 and 30, 2005 were backed by good funds in the Company's and his personal bank accounts or soon would be -- through the expected Thayer payment to the Company. Creditor fully and knowingly assumed the risk that Thayer would not pay Debtor in a timely fashion.

CONCLUSION

For the foregoing reasons, the claims asserted by Creditor against Debtor are discharged under 11 U.S.C. §523(a). Counsel for Debtor shall submit a form of judgment holding that Debtor's debt to Creditor is not excepted from his bankruptcy discharge -- after review by Creditor as to form.

Dated:

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ARTHUR S. WEISSBRODT
UNITED STATES BANKRUPTCY JUDGE